

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
**ERIC SCHERZER, as Trustee of the VOLUNTARY  
HOSPITALS HOUSE STAFF BENEFITS PLAN,**

**Plaintiff,**

**-against-**

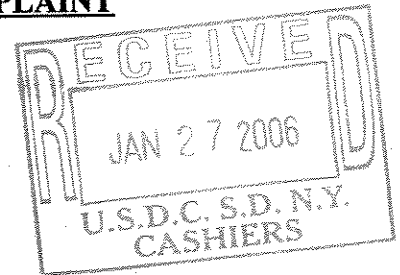
**BROOKDALE HOSPITAL MEDICAL CENTER,**

**Defendant.**  
\_\_\_\_\_

**JUDGE CASEY**

**06 CV 0665**

**COMPLAINT**



Plaintiff, by his attorneys, Kennedy, Jennik & Murray, P.C., complaining of the  
defendant, respectfully alleges as follows:

**NATURE OF ACTION**

1. This is an action arising under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001, *et seq.*, to recover delinquent contributions owed to a multi-employer welfare plan.

**JURISDICTION**

2. This Court's subject matter jurisdiction is invoked pursuant to ERISA Sections 502(a)(3)(B), (d)(1), (e) and (f), 4301(a) and (c), 29 U.S.C. §§ 1132(a)(3)(B), (d)(1), (e) and (f), 1451(a) and (c). Venue is proper because the Voluntary Hospitals House Staff Benefits Plan is administered in the district where the action is brought pursuant to ERISA Section 502(e)(2), 29 U.S.C. §1132(e)(2).

**PARTIES**

3. Plaintiff Eric Scherzer is a Trustee of the Voluntary Hospitals House Staff Benefits Plan (hereinafter the "Plan").

4. The Plan is an employee welfare benefit plan within the meaning of Section 3(1) of ERISA, 29 U.S.C. §1002(1), established for the purposes of providing medical and other benefits to the employees of contributing employers. The Plan is administered and maintains its principal place of business at 520 Eighth Avenue - Suite 1200, New York, New York 10018.

5. Upon information and belief, defendant Brookdale Hospital Medical Center (hereinafter "Employer" ) is a corporation incorporated under the Laws of the State of New York, with its principal place of business at One Brookdale Plaza, Brooklyn, NY 11212. Defendant is an "employer" within the meaning of Section 3(5) of ERISA, 29 U.S.C. § 1002(5).

**AS AND FOR A FIRST CAUSE OF ACTION**

6. At all relevant times, the Employer was a party to a collective bargaining agreement (hereinafter "Agreement") with the Committee of Interns and Residents/SEIU. Under the terms of said Agreement, the Employer was and is obligated to make contributions to the Plan each month for each employee covered by the Agreement. The Agreement sets forth the rate of contribution the Employer is obligated to make in each year of the Agreement.

7. The Employer failed to make payments due the Plan on behalf of covered employees for September, 2005 and for the period October 2005 through the present, despite its obligation to do so, and continues to be delinquent in its current obligation to contribute to the Plan.

8. As of January 23, 2006 the Employer is delinquent in its contributions to the plan in the approximate amount of \$314,321.00 and accumulated interest in the amount of \$21,133.88. The total amount of unpaid contributions and interest owed to the Plan is \$335,454.88.

9. The Employer has paid no part of the above delinquent contributions or interest owed to the Plan. It is anticipated that the delinquency will grow during the pendency of this lawsuit as the defendant fails to remit contributions as they become due.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff respectfully requests the following:

1. Judgment in favor of plaintiff, and against defendant Flushing Medical Center in the principal amount of \$335,454.88 plus continuing amounts as such become due to the date of judgment; and
2. further interest on the unpaid contributions at the rate as determined pursuant to 29 U.S.C. § 1132(g)(2)(B); and
3. the greater of the interest as set forth above and liquidated damages in the amount of 20% of the unpaid contributions pursuant to 29 U.S.C. § 1132(g)(2)(C)(I) and (ii); and
4. attorney's fees and costs pursuant to 29 U.S.C. § 1132(g)(2)(D); and
5. such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
January 27, 2006

KENNEDY, JENNIK & MURRAY, P.C.  
Attorneys for Plaintiff

By: 

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